



Signed and Filed: July 29, 2022

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel", is written over a horizontal line.

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:) Case No. 19-31024 HLB
RICHARD TOM,) Chapter 7
Debtor.)
MARK NG, KENDALL NG, and)
LORAIN WONG,) Adv. Proc. No. 19-3065 HLB
Plaintiffs,)
v.)
RICHARD TOM,)
Defendant.)

MEMORANDUM DECISION AND ORDER GRANTING
PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

This proceeding came before the court on July 21, 2022 for a hearing on Plaintiffs Mark Ng, Kendall Ng, and Loraine Wong's motion for summary adjudication.¹ Defendant Richard Tom opposed the Motion²; Plaintiffs replied.³ Mr. Tom also filed an

¹ Dkt. 90 (the "Motion").

² Dkt. 128 (the "Opposition"), supported by the Declaration of Richard Tom (Dkt. 129).

³ Dkt. 132.

1 Objection to New Evidence Proffered by Plaintiffs in Reply.⁴

2 Appearances were as noted on the record.

3 At the beginning of the hearing, the court orally overruled
4 Mr. Tom's evidentiary objections to the Declaration of Paul
5 Johnson⁵ filed in support of the Motion and the exhibits attached
6 thereto. The court orally sustained Plaintiffs' evidentiary
7 objection to Exhibit D to Mr. Tom's Declaration⁶ in support of
8 his Opposition. The court orally overruled as moot the objection
9 raised in the Sur-Reply to a Supplemental Declaration of Paul
10 Johnson⁷ filed with Plaintiffs' Reply, and orally overruled Mr.
11 Tom's objections to Exhibits 18-21 to Mr. Johnson's Supplemental
12 Declaration. At the conclusion of the hearing, the court took
13 the Motion under advisement.

14 **I. Relief Sought**

15 Plaintiffs seek summary adjudication or partial summary
16 judgment as to issues relevant to two causes of action, both of
17 which arise under section 523(a)⁸ and demand a judgment declaring
18 nondischargeable a debt owed to Plaintiffs by Mr. Tom.

19 Under section 523(a)(6), Plaintiffs contend Mr. Tom's debt
20 is nondischargeable because it arises from injuries they suffered

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22 ⁴ Dkt. 133 (the "Sur-Reply").

23 ⁵ Dkt. 90-2.

24 ⁶ Dkt. 129.

25 ⁷ Dkt. 132-1.

26 ⁸ Unless otherwise indicated, all statutory citations shall refer to Title 11
27 of the United States Code, aka the "Bankruptcy Code". In addition, all
28 citations to a "Bankruptcy Rule" shall refer to one of the Federal Rules of
Bankruptcy Procedures and all citations to a "Civil Rule" shall refer to one
of the Federal Rules of Civil Procedure.

1 as a result of Mr. Tom's willful and malicious conduct. On
2 February 16, 2022,⁹ the court granted Plaintiffs' prior motion
3 for partial summary judgment, finding for purposes of section
4 523(a)(6) that (a) Plaintiffs suffered injuries and (b) Mr. Tom
5 caused those injuries. By way of the Motion, Plaintiffs seek a
6 finding that Mr. Tom's conduct in causing Plaintiffs' injuries
7 was willful and malicious.

8 Pursuant to section 523(a)(9), Plaintiffs argue that Mr.
9 Tom's debt is nondischargeable because his debt arises from death
10 and personal injury caused by Mr. Tom's unlawful operation of a
11 motor vehicle while intoxicated by alcohol. In the Feb. 16
12 Order, the court concluded that Plaintiffs suffered injuries
13 caused by Mr. Tom's operation of a motor vehicle for purposes of
14 section 523(a)(9). The Motion now seeks a finding that Mr. Tom's
15 operation of his motor vehicle at the time of the crash was
16 unlawful because he was intoxicated by alcohol.

17 Granting the Motion will resolve Plaintiffs' causes of
18 action under sections 523(a)(6) and 523(a)(9) in their favor.
19 But it will not completely resolve this proceeding because
20 Plaintiffs' cause of action under section 523(a)(2)(A) will
21 remain pending.¹⁰
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24 ⁹ Dkt. 45 (the "Feb. 16 Order"). Mr. Tom appealed the Feb. 16 Order (Dkt. 48)
25 to the Bankruptcy Appellate Panel for the Ninth Circuit, but that appeal was
dismissed on May 3, 2022 (Dkt. 92).

26 ¹⁰ Under section 523(a)(2)(A), Plaintiffs seek a judgment declaring
27 nondischargeable a debt arising from certain allegedly fraudulent transfers.
28 In its Feb. 16 Order, the court granted summary adjudication as to one of the
four relevant transfers. The three other transfers have yet to be adjudicated
by this court.

1 **II. Subject Matter Jurisdiction**

2 The Motion pertains to causes of action arising under
3 section 523 of the Bankruptcy Code, over which this court has
4 subject matter jurisdiction and as to which this court may enter
5 a final judgment.¹¹

6 **III. Background¹²**

7 This action arises from a horrific tragedy. On the night of
8 February 19, 2007, after having dinner at home with a friend
9 (before and during which they consumed alcohol), Mr. Tom traveled
10 with his friend to the home of Mr. Tom's son to retrieve a Toyota
11 Camry. As Mr. Tom and his friend returned to Mr. Tom's house in
12 Redwood City, Mr. Tom drove his Mercedes E320; his friend drove
13 the Toyota Camry. In their separate vehicles, Mr. Tom and his
14 friend proceeded down Woodside Road in San Carlos, California.
15 Mr. Tom's vehicle was some distance ahead of the Camry driven by
16 his friend.

17 Meanwhile, Plaintiff Loraine Wong, Plaintiff Kendall Ng (the
18 daughter of Loraine Wong and Plaintiff Mark Ng), and Sydney Ng
19 (also Ms. Wong and Mr. Ng's daughter) left their nearby home in a
20 Nissan Maxima. Ms. Wong was driving and, as she turned left onto
21 Woodside Road, Mr. Tom smashed into her car. Ms. Wong and
22 Kendall Ng were seriously injured; Sydney Ng was killed.

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25 ¹¹ 28 U.S.C. § 1334(b); 28 U.S.C. §§ 157(a), (b)(1), and (b)(2)(I); General
26 Order No. 24 of the United States District Court for the Northern District of
27 California; see also In re Mcharo, 2020 WL 118589, *2 (B.A.P. 9th Cir. Jan. 9,
2020) (acknowledging bankruptcy court's subject matter jurisdiction over
proceedings asserting claims under section 523).

28 ¹² These facts are undisputed and are paraphrased from People v. Tom, 59 Cal.
4th 1210 (2014) and Wong v. Tom, 2015 WL 691413 (Feb. 18, 2015) (unpublished).

1 Following the crash, Mr. Tom was charged with gross
2 vehicular manslaughter while intoxicated; driving under the
3 influence causing harm to another; and driving with a blood-
4 alcohol content of 0.08 percent or higher causing harm to
5 another, along with various enhancement allegations. A jury
6 acquitted Mr. Tom of the alcohol-related charges, but convicted
7 him of vehicular manslaughter with gross negligence. The
8 criminal court sentenced Mr. Tom to seven years in prison.

9 While in prison, Mr. Tom appealed his conviction. The court
10 of appeals reversed his conviction on Fifth Amendment grounds.
11 The California Supreme Court reversed and remanded.¹³ Mr. Tom
12 was tried a second time, which ended in a mistrial.¹⁴ This court
13 has received no evidence of further criminal proceedings relevant
14 to this action.

15 On August 3, 2007, Mr. Ng, Ms. Wong, and Kendall Ng sued Mr.
16 Tom in San Mateo Superior Court,¹⁵ seeking compensatory and
17 punitive damages for wrongful death, personal injury, and
18 negligent infliction of emotional distress.¹⁶ They accused Mr.
19 Tom of being intoxicated by alcohol when he broadsided the car
20 occupied by Ms. Wong and her daughters.

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24 ¹³ People v. Tom, 59 Cal. 4th 1210 (2014).

25 ¹⁴ Dkt. 129 (Declaration of Richard Tom in Opposition to Motion), ¶ 18.

26 ¹⁵ Wong v. Tom, Case No. CIV 464944 (San Mateo Superior Court) (the "Wrongful
Death Action").

27 ¹⁶ Dkt. 6-2 (Declaration of Matthew Metzger in support of Motion to Dismiss),
28 Ex. 7 (Complaint filed in Wrongful Death Action).

1 In the Summer of 2012, the Wrongful Death Action was tried
2 to a jury over the course of 19 days.¹⁷ On August 15, 2012, the
3 jury issued its verdict.¹⁸ They found Mr. Tom negligent and that
4 his negligence caused Sydney Ng's death, as well as the injuries
5 suffered by Ms. Wong and Kendall Ng. The jury also found that
6 Ms. Wong was not negligent. Finally, the jury found that, in
7 causing injury to Ms. Wong and Kendall Ng, Mr. Tom acted with
8 malice or oppression.

9 The jury awarded \$8,000 in punitive damages to Mr. Ng,
10 Kendall Ng, and Ms. Wong, in addition to awarding them more than
11 \$7.0 million in economic and non-economic damages arising from
12 Sydney Ng's wrongful death and their personal injuries. On
13 October 10, 2012, the court presiding over the Wrongful Death
14 Action entered a judgment in favor of Mr. Ng, Ms. Wong, and
15 Kendall Ng for \$7,258,000 (the "Wrongful Death Judgment").¹⁹

16 Following entry of the Wrongful Death Judgment, Mr. Tom
17 filed two post-trial motions: a motion for a new trial (the
18 "MNT"),²⁰ and a motion for partial judgment notwithstanding the
19 verdict (the "MPJNOV").²¹ As relevant to this action, Mr. Tom

21 ¹⁷ Dkt. 90-2 (Declaration of Paul Johnson in Support of Motion), Ex. 1
(Judgment on Special Verdict entered in Wrongful Death Action).

22 ¹⁸ Id.

23 ¹⁹ Id.

24 ²⁰ Dkt. 90-2, **Ex. 3** (Notice of Intention to Move for New Trial filed October
25 25, 2012); **Ex. 5** (Memorandum in Support of MNT filed November 6, 2012); **Ex. 14**
(Declaration of Paul S. Sheng in Support of MNT filed November 6, 2012); **Ex.**
26 **11** (Reply in Support of MNT filed November 28, 2012).

27 ²¹ Dkt. 90-2, **Ex. 4** (Notice of MPJNOV filed November 6, 2012); **Ex. 6** (MPJNOV
28 filed November 6, 2012); **Ex. 15** (Declaration of Paul S. Sheng in Support of
MPJNOV filed November 6, 2012); and **Ex. 12** (Reply in Support of MPJNOV filed
November 28, 2012).

1 argued in his MNT that the jury's findings of no comparative
2 negligence on the part of Ms. Wong and of malice and oppression
3 on the part of Mr. Tom were contrary to the weight of the
4 evidence. In his MPJNOV, Mr. Tom argued that no substantial
5 evidence supported the jury's finding that he acted with malice
6 and oppression.

7 With respect to the jury's finding that Ms. Wong was not
8 comparatively negligent, Mr. Tom pointed to alleged
9 inconsistencies in her statements to accident investigators and
10 police officers at or near the time of the crash and her
11 testimony in deposition and in trial. According to Mr. Tom, Ms.
12 Wong initially told police officers that she was talking to her
13 sister on a cell phone when the accident occurred, but later
14 testified that she had concluded her telephone conversation, had
15 not yet disconnected the call, and still had her cell phone in
16 her hand when the collision occurred. Ms. Wong admitted during
17 her trial testimony that her recollection of the collision and
18 events surrounding it likely was better at or near the time it
19 occurred.

20 Mr. Tom also argued that Ms. Wong gave inconsistent
21 testimony concerning her visibility down Woodside Road, whether
22 she looked both right and left before turning onto Woodside Road,
23 and whether she came to a complete stop before entering Woodside
24 Road, despite knowing that drivers frequently exceeded the speed
25 limit on Woodside Road and that the intersection where the crash
26 occurred was dangerous. Based on these inconsistencies, Mr. Tom

1 contended in his MNT that the jury's verdict as to Ms. Wong's
2 comparative negligence contravened the weight of the evidence,
3 and he encouraged the court to exercise its discretion to award
4 him a new trial.

5 As to the jury's finding that he acted with malice and
6 oppression, Mr. Tom argued in his MNT that the Plaintiffs had
7 failed to present clear and convincing evidence that he had been
8 traveling with excessive speed and that he was impaired by
9 alcohol at the time of the collision. He pointed to numerous
10 alleged inconsistencies in the evidence presented to the jury on
11 these issues and asserted that the jury's finding that he acted
12 with malice and oppression by driving too fast while impaired by
13 alcohol contravened the weight of the evidence and justified a
14 new trial.

15 In his MPJNOV, Mr. Tom urged the court to invalidate the
16 jury's punitive damages award on the grounds that Plaintiffs had
17 failed to prove that he acted with malice and oppression by
18 speeding while intoxicated by alcohol. In support of this
19 argument, Mr. Tom pointed to the same alleged evidentiary
20 inconsistencies on which he relied in support of his MNT.

21 The state court denied both the MNT and MPJNOV in orders
22 issued December 4, 2012.²² In denying the MNT, the state court
23 pointed out that the "evidence presented at trial showed there
24 were differences in Lorraine [sic] Wong's testimony regarding
25 whether she was on the phone as she entered into the

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27 ²² Dkt. 90-2, Ex. 13 (Notice of Entry of Orders Denying Motions for New Trial
28 and Partial Judgment Notwithstanding Verdict).

1 intersection"²³ and that "these differences were highlighted
2 during her testimony in trial."²⁴ The state court examined these
3 inconsistencies and concluded "there is substantial evidence to
4 support the jury's verdict" on the issue of Ms. Wong's
5 comparative negligence.²⁵

6 As to whether Mr. Tom acted with malice and oppression by
7 speeding while intoxicated by alcohol, the state court concluded
8 that "the evidence presented at trial was clear and convincing to
9 support the jury verdict."²⁶ As the state court explained:
10 "[t]he weight of the evidence supports Mr. Tom was in violation
11 of the speed limit . . . [a]s to Mr. Tom being under the
12 influence of alcohol, the evidence established that Mr. Tom was
13 under the influence of alcohol."²⁷ "The evidence was clear and
14 convincing that Defendant violated the basic speed law and was
15 legally under the influence Given the fact that Mr. Tom
16 was under the influence of alcohol and was operating his vehicle
17 at an excessive speed at the time of the collision, the verdict
18 in relation to the evidence is not contrary to the weight of the
19 evidence."²⁸

20 In denying Mr. Tom's MPJNOV, the state court first pointed
21 out that it "cannot weigh the evidence or determine the
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23 ²³ Id.

24 ²⁴ Id.

25 ²⁵ Id.

26 ²⁶ Id.

27 ²⁷ Id.

28 ²⁸ Id.

1 credibility of the witnesses”²⁹; rather, “the test is whether
2 there is substantial evidence that supports the verdict.” The
3 state court concluded that “there is substantial evidence
4 supporting the verdict or reasonable inferences can be drawn from
5 that evidence supporting the verdict.”³⁰ The court examined the
6 evidence that supported the jury’s conclusion that Mr. Tom was
7 speeding and intoxicated by alcohol before reiterating that
8 “there was substantial evidence to support the jury finding
9 malice for purposes of punitive damages.”³¹

10 Mr. Tom did not appeal the state court’s orders denying his
11 MNT and MPJNOV. Instead, he appealed the jury’s verdict.³² On
12 appeal, he made arguments identical to those he made in support
13 of his MNT and MPJNOV. The California Court of Appeals for the
14 First District affirmed the jury’s verdict in its entirety.³³

15 In examining whether substantial evidence supported the
16 jury’s verdict as to Ms. Wong’s comparative negligence, the court
17 of appeals painstakingly analyzed the record of trial, including
18 Ms. Wong’s allegedly inconsistent statements and testimony
19 concerning her cell phone use, her care in proceeding into the
20 intersection where the crash occurred, and her failure to see Mr.
21 Tom’s car as he sped toward the intersection. The court of
22 appeals rejected all of Mr. Tom’s arguments.

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24 ²⁹ Id.

25 ³⁰ Id.

26 ³¹ Id.

27 ³² Dkt. 90-2, Ex. 16 (Notice of Appeal filed December 27, 2012).

28 ³³ Wong v. Tom, 2015 WL 691413 (Feb. 28, 2015) (unpublished).

1 The court of appeals also took great care in its review of
2 the jury's finding that Mr. Tom acted with malice and oppression
3 sufficient to justify an award of punitive damages. After
4 reviewing the legal standards applicable to such findings, the
5 court noted that "[i]n addressing [a challenge to the award of
6 punitive damages], we inquire whether the record contains
7 substantial evidence to support a determination by clear and
8 convincing evidence."³⁴ It then concluded that the jury had
9 received proper instructions and presumed that the jury had
10 followed those instructions.³⁵

11 The court of appeals pointed out that, "[h]ere, there is no
12 basis for second-guessing,"³⁶ as Mr. Tom did:

13 not dispute that he was familiar with the intersection
14 where the accident occurred and knew it had impaired
15 visibility due to perennially parked cars, was driving
16 more than 51 miles an hour as he approached that
17 obscured intersection, had been driving 85 miles an
18 hour within less than a mile of the accident site, was
19 operating at these speeds on residential streets with
20 posted speed limits of 30 and 35 miles per hour after
21 dark, and had been drinking. At the speeds Tom chose
22 to drive, approaching an intersection with an impaired
23 view, inattention to the road by a sober driver could
24 result in disaster. Yet Tom was driving in this manner
25 after drinking, thereby gravely increasing the risk he
26 would not be able to respond adequately to unexpected
27 events. Tom must have known such conduct carried
28 probable dangerous consequences.³⁷

21 The court of appeals characterized Mr. Tom's arguments as
22 consisting "largely of quibbling with the opinions of plaintiffs'
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25 ³⁴ Id. at *5 (internal quotation marks and citations omitted).

26 ³⁵ Id.

27 ³⁶ Id.

28 ³⁷ Id. (internal quotation marks and citations omitted).

1 experts" and concluded that clear and convincing evidence
2 supported the jury's finding that Mr. Tom had been speeding at
3 the time of the crash, which "was sufficient to support a finding
4 of malice under the circumstances."³⁸

5 The court of appeals also rejected Mr. Tom's argument that
6 Plaintiffs had failed to present clear and convincing evidence in
7 support of his impairment by alcohol at the time of the crash.
8 "The jury could easily have concluded, based on evidence in the
9 record" that Mr. Tom was intoxicated by alcohol when he seriously
10 injured Ms. Wong and Kendall Ng and killed Sydney Ng.³⁹ The
11 court reviewed the evidence and stated that it constituted
12 "substantial evidence of impairment by alcohol at the time of the
13 accident, even with due attention to the heightened standard of
14 proof owing to the requirement of clear and convincing evidence.
15 The contrary evidence discussed by Tom, including his expert's
16 testimony, is not so persuasive as to undermine the value of this
17 substantial evidence."⁴⁰

18 **IV. Arguments**

19 In the Motion, Plaintiffs argue that the doctrine of
20 collateral estoppel precludes relitigation of the issues of
21 whether (a) Mr. Tom's operation of his motor vehicle was unlawful
22 due to his intoxication by alcohol; and (b) Mr. Tom acted
23 willfully and maliciously. According to Plaintiffs, these issues
24 were actually and necessarily decided on the merits in the

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26 ³⁸ Id.

27 ³⁹ Id. at *6.

28 ⁴⁰ Id. (internal quotation marks and citations omitted).

1 Wrongful Death Action, which involved the identical parties.
2 Given that the state court rulings are final, Plaintiffs argue
3 that public policy and a concern for the integrity of the
4 judicial system require this court to honor the jury's verdict,
5 as affirmed by the court of appeals, and to honor the state
6 court's rulings on Mr. Tom's MNT and MPJNOV.

7 Mr. Tom hangs his hat on calling Loraine Wong a liar. He
8 contends that collateral estoppel should not apply here because
9 Ms. Wong perjured herself in testimony she gave during the
10 Wrongful Death Action. As a result of Ms. Wong's alleged
11 perjury, Mr. Tom argues that he did not have a full and fair
12 opportunity to litigate the issues of his negligence, Ms. Wong's
13 comparative negligence, and his malicious and oppressive conduct.
14 According to Mr. Tom, and notwithstanding the final orders issued
15 by the state court denying his MNT and MPJNOV and the court of
16 appeals' affirmance of the verdict and judgment in the Wrongful
17 Death Action, he is entitled to a trial on the issues of whether
18 his operation of his motor vehicle was unlawful due to his
19 intoxication for purposes of section 523(a) (9) and whether he
20 acted willfully and with malice for purposes of section
21 523(a) (6) .

22 **V. Legal Standards**

23 **A. Summary Judgment**

24 Summary judgment is appropriate where "the pleadings,
25 depositions, answers to interrogatories, and admissions on file,
26 together with the affidavits . . . show that there is no genuine
27 issue as to any material fact and that the moving party is
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1 entitled to a judgment as a matter of law.”⁴¹ The court must
2 view all evidence in the light most favorable to the non-moving
3 party.⁴²

4 The moving party bears the burden of establishing that no
5 genuine issue of material fact exists.⁴³ Once the movant has
6 satisfied its burden, the non-moving party must demonstrate the
7 existence of a genuine issue of fact for trial.⁴⁴

8 The non-moving party “must do more than simply show that
9 there is some metaphysical doubt as to the material facts.”⁴⁵
10 Thus, where the factual context renders the non-moving party’s
11 position implausible, the non-moving party “must come forward
12 with more persuasive evidence to support their claim than would
13 otherwise be necessary.”⁴⁶ Further, where the non-moving party
14 would bear the burden of proof with respect to an element at
15 trial, they must “make a showing sufficient to establish the
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19 ⁴¹ Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Civil Rule 56(a), which
20 applies in this proceeding pursuant to Bankruptcy Rule 7056.

21 ⁴² County of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1154 (9th Cir.
2001).

22 ⁴³ Celotex, 477 U.S. at 323.

23 ⁴⁴ De Horney v. Bank of America Nat’l Trust & Sav. Ass’n, 879 F.2d 459, 464
24 (9th Cir. 1989).

25 ⁴⁵ Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586
26 (1986); see United States Postal Serv. v. Ester, 836 F.3d 1189, 1198 (9th Cir.
2016) (citing Matsushita Elec.) (concluding speculation was insufficient to
27 defeat motion for summary judgment that was supported by “persuasive (albeit
not conclusive) evidence”).

28 ⁴⁶ Matsushita Elec., 475 U.S. at 586.

1 existence" of such element to defeat a motion for summary
2 judgment.⁴⁷

3 **B. Section 523(a) (9)**

4 Section 523(a) (9) precludes discharge of debts "for death or
5 personal injury caused by the debtor's operation of a motor
6 vehicle, vessel, or aircraft if such operation was unlawful
7 because the debtor was intoxicated from using alcohol, a drug, or
8 another substance." In order to prevail under section 523(a) (9),
9 Plaintiffs must prove by a preponderance of the evidence⁴⁸ that
10 (1) the debt owed to them by Mr. Tom is for death or personal
11 injury; (2) caused by Mr. Tom's operation of a motor vehicle; and
12 (3) Mr. Tom's operation of the motor vehicle was unlawful due to
13 his intoxication.⁴⁹ In its Feb. 16 Order, the court summarily
14 adjudicated the first two of the foregoing elements in
15 Plaintiffs' favor.⁵⁰ Thus, the only issue to be adjudicated here
16 is whether Mr. Tom's operation of his motor vehicle was unlawful
17 due to his intoxication.

21 ⁴⁷ Celotex, 477 U.S. at 323; see Sonner v. Schwabe N. America, Inc., 911 F.3d
22 989, 992 (9th Cir. 2018) ("[t]o defeat summary judgment, the nonmoving party
23 must produce evidence of a genuine dispute of material fact that could satisfy
24 its burden at trial"); see, e.g., Theis v. Graco, Inc., 763 F. App'x, 641-42
(9th Cir. 2019) (affirming grant of summary judgment where California law
required that non-moving party establish causation through expert testimony,
but such party failed to proffer such evidence).

25 ⁴⁸ Grogan v. Garner, 498 U.S. 279, 291 (1991).

26 ⁴⁹ Schoonover v. Elford (In re Elford), 618 B.R. 872, 893 (Bankr. E.D. Cal.
27 2020); Bucher v. Hughes (In re Hughes), 488 B.R. 169, 175 (Bankr. D. Mont.
2013).

28 ⁵⁰ Dkt. 45.

1 **C. Section 523(a) (6)**

2 Section 523(a) (6) excepts from discharge debts “for
3 willful and malicious injury by the debtor.” In order to
4 prevail on a claim under section 523(a) (6), the plaintiff must
5 plead, and then prove by a preponderance of the evidence,⁵¹ that
6 the defendant’s conduct was both willful and malicious.⁵²

7 Willfulness requires a “deliberate or intentional *injury*,
8 not merely a deliberate or intentional *act* that leads to
9 injury.”⁵³ Put another way, the defendant must intend the
10 consequence of the act, not simply the act itself, in order for
11 a debt caused by that act to be declared nondischargeable under
12 section 523(a) (6).⁵⁴

13 For purposes of section 523(a) (6), the Ninth Circuit has
14 adopted a subjective standard.⁵⁵ Willfulness requires a
15 “subjective motive to inflict injury” or a subjective belief
16 that “injury is substantially certain to result” from one’s
17 conduct in order for liability under section 523(a) (6) to
18 adhere.⁵⁶

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21 ⁵¹ Grogan, 498 U.S. at 291.

22 ⁵² In re Ormsby, 591 F.3d 1199, 1206 (9th Cir. 2010); In re Barboza, 545 F.3d
23 702, 706 (9th Cir. 2008) (the “willful” requirement is separate and distinct
from the “malicious” requirement).

24 ⁵³ Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998) (emphasis in original); Ditto
25 v. McCurdy, 510 F.3d 1070, 1078 (9th Cir. 2007) (same).

26 ⁵⁴ Ormsby, 591 F.3d at 1206.

27 ⁵⁵ In re Su, 290 F.3d 1140, 1146 (9th Cir. 2002).

28 ⁵⁶ Ormsby, 591 F.3d at 1206.

1 Malicious injury "involves (1) a wrongful act, (2) done
2 intentionally, (3) which necessarily causes injury, and (4) is
3 done without just cause or excuse."⁵⁷ Malice may be implied from
4 the wrongful nature of the act itself.⁵⁸ Malice does not require
5 a showing of biblical malice, i.e., personal hatred, spite, or
6 ill will.⁵⁹

7 **D. Collateral Estoppel**

8 The doctrine of collateral estoppel serves the purpose of
9 protecting parties from multiple lawsuits and the possibility
10 of inconsistent decisions, and it conserves judicial resources.⁶⁰
11 The bankruptcy court may give issue preclusive effect to a state-
12 court judgment as the basis for excepting a debt from
13 discharge.⁶¹

14 Under the Full Faith and Credit Act,⁶² the preclusive effect
15 of a state court judgment in a subsequent bankruptcy proceeding
16 is determined by the preclusion law of the state in which the
17 judgment was issued.⁶³ California permits application of issue
18 preclusion to an existing judgment: (1) after final
19 adjudication; (2) of an identical issue; (3) actually litigated

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21 ⁵⁷ Id. at 1207 (citations omitted).

22 ⁵⁸ In re Thiara, 285 B.R. 420, 434 (B.A.P. 9th Cir. 2002).

23 ⁵⁹ Id. at 434 n. 15 (citing McIntyre v. Kavanaugh, 242 U.S. 138, 141-42
(1916)).

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25 ⁶⁰ In re Berr, 172 B.R. 299, 306 (B.A.P. 9th Cir. 1994) (citations omitted).

26 ⁶¹ In re Harmon, 250 F.3d 1240, 1245 (9th Cir. 2001).

27 ⁶² 28 U.S.C. § 1738.

28 ⁶³ In re Nourbakhsh, 67 F.3d 798, 800 (9th Cir. 1995) (citing Marrese v. Am.
Acad. of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985)).

1 in the former proceeding; (4) necessarily decided in the former
2 proceeding; and (5) asserted against a party in the former
3 proceeding or in privity with that party.⁶⁴ In addition, the
4 court must determine that issue preclusion "furthers the public
5 policies underlying the doctrine."⁶⁵ The party advocating for
6 application of the doctrine of collateral estoppel bears the
7 burden of establishing the foregoing requirements.⁶⁶

8 **VI. Analysis**

9 **A. Collateral Estoppel**

10 Plaintiffs ask the court to apply to preclusive effect the
11 jury verdict and judgment entered in the Wrongful Death Action,
12 as well as the orders denying Mr. Tom's MNT and MPJNOV. In order
13 to do so, the court must analyze several factors, as explained
14 above.

15 **1. Identity of Parties**

16 The parties do not dispute that they to this proceeding are
17 identical to the parties to the Wrongful Death Action.
18 Accordingly, Plaintiffs have satisfied this condition predicate
19 to the application of the doctrine of collateral estoppel to the
20 jury verdict, judgment, and orders denying the MNT and MPJNOV in
21 the Wrongful Death Action.

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26 ⁶⁴ Lucido v. Sup. Ct., 51 Cal. 3d 335, 341 (1990).

27 ⁶⁵ Harmon, 250 F.3d at 1245 (citing Lucido, 51 Cal. 3d at 342-43); see also In
re Khaligh, 338 B.R. 817, 824-25 (B.A.P. 9th Cir. 2006).

28 ⁶⁶ Harmon, 250 F.3d at 1245.

1 **2. Identity of Issues**

2 The parties disagree as to whether the issues litigated in
3 the Wrongful Death Action are identical to those relevant to this
4 action.

5 **a. Unlawful Operation of a Motor Vehicle Due to**
6 **Intoxication.**

7 The "identity of issues" requirement of the doctrine of
8 collateral estoppel focuses on whether identical factual
9 allegations are at stake in the prior and current litigation, not
10 whether the ultimate issues or dispositions are the same.⁶⁷ The
11 parties do not dispute that Plaintiffs here rely on factual
12 allegations and evidence that was presented to the state court in
13 the Wrongful Death Action and on which Plaintiffs prevailed. Mr.
14 Tom contends, however, that "[t]here is nothing submitted in
15 support of the present motion that establishes, by clear and
16 convincing evidence, that Mr. Tom drove at unreasonably excessive
17 speed⁶⁸ and was impaired by alcohol at the point of collision."
18 Mr. Tom also contends that, even if the court finds that his
19 intoxication was established by the jury verdict, judgment, and
20 orders denying his MNT and MPJNOV, the Plaintiffs have not
21 demonstrated that his intoxication caused their injuries and
22 killed Sydney Ng.

23 As found by the state court in its orders denying Mr. Tom's
24 MNT and MPJNOV,⁶⁹ the jury received clear and convincing evidence

25 _____
26 ⁶⁷ Hernandez v. City of Pomona, 46 Cal. 4th 501, 512 (2009).

27 ⁶⁸ The speed at which Mr. Tom was driving when he hit Plaintiffs' vehicle is
28 irrelevant for purposes of section 523(a)(9).

⁶⁹ Dkt. 90-2, Ex. 13.

1 that established "that Mr. Tom was under the influence of
2 alcohol". Accordingly, the issue of Mr. Tom's intoxication was
3 presented to the jury in the trial of the Wrongful Death Action
4 and again to the judge who presided over the Wrongful Death
5 Action through Mr. Tom's MNT and MPJNOV. The court of appeals
6 also confirmed that the jury received substantial evidence of Mr.
7 Tom's intoxication and declined to disturb the judgment entered
8 in the Wrongful Death Action.⁷⁰

9 The court notes that, in this action, Plaintiffs must prove
10 Mr. Tom's intoxication by a preponderance of the evidence.⁷¹ In
11 the Wrongful Death Action, the standard of proof required clear
12 and convincing evidence on that issue.⁷² It bears emphasizing
13 that Plaintiffs prevailed on this issue in the Wrongful Death
14 Action according to a standard of proof more stringent than that
15 which applies here.

16 As Mr. Tom argued in his MNT and MPJNOV, whether his
17 operation of a motor vehicle was unlawful due to his intoxication
18 is governed by section 23152(a) of the California Vehicle Code
19 ("CVC"). CVC section 23152(a) also governs that same issue for
20 purposes of section 523(a)(9).⁷³ CVC 23152(a) makes it "unlawful
21 for a person who is under the influence of any alcoholic beverage
22 to drive a vehicle." Given the jury's conclusion that Mr. Tom
23 was intoxicated when he injured Plaintiffs and killed Sydney Ng,

24 _____
25 ⁷⁰ Wong v. Tom, 2015 WL 691413 at *6.

26 ⁷¹ Grogan, 498 U.S. at 291.

27 ⁷² Wong v. Tom, 2015 WL 691413 at *4; Cal. Civ. Code § 3294(a).

28 ⁷³ Elford, 618 B.R. at 894.

1 his operation of the vehicle was unlawful under the very standard
2 he advocated in his MNT and MPJNOV. The very same standards
3 apply to this action.

4 In its Feb. 16 Order,⁷⁴ this court has already ruled that
5 Mr. Tom caused Sydney Ng's death and Plaintiffs' injuries. The
6 court based this ruling on the verdict of the jury in the
7 Wrongful Death Action, which reached that same conclusion.⁷⁵

8 Plaintiffs have established that the issue of Mr. Tom's
9 unlawful operation of a motor vehicle due to his intoxication for
10 purposes of this action is identical to that reached by the state
11 court in the Wrongful Death Action, both in the trial of that
12 action and in the state court's rulings on Mr. Tom's MNT and
13 MPJNOV.

14 **b. Willful and Malicious Conduct**

15 In order to prove their entitlement to punitive damages,
16 Plaintiffs had to present the jury in the Wrongful Death Action
17 with clear and convincing evidence that Mr. Tom acted with malice
18 or oppression.⁷⁶ In the Wrongful Death Action, "'Malice' means
19 conduct which is intended by the defendant to cause injury to the
20 plaintiff or despicable conduct which is carried on by the
21 defendant with a willful and conscious disregard of the rights or
22 safety of others."⁷⁷ "'Oppression' means despicable conduct that

23 _____
24 ⁷⁴ Dkt. 45.

25 ⁷⁵ Dkt. 90-2, Ex.1.

26 ⁷⁶ Cal. Civ. Code § 3294(a). The court reiterates that the "clear and
27 convincing evidence" standard under which Plaintiffs prevailed in the Wrongful
28 Death Action is more stringent than the "preponderance of the evidence"
standard that applies in this action. Grogan, 498 U.S. at 291.

⁷⁷ Cal. Civ. Code § 3294(c)(1).

1 subjects a person to cruel and unjust hardship in conscious
2 disregard of that person's rights."⁷⁸ "Despicable" conduct
3 constitutes that which is "so vile, base, contemptible,
4 miserable, wretched or loathsome that it would be looked down
5 upon and despised by ordinary decent people."⁷⁹

6 Plaintiffs argue that Mr. Tom's deliberate choice to get
7 behind the wheel of a car while intoxicated constitutes willful
8 and malicious conduct for purposes of section 523(a)(6) as a
9 matter of law. Mr. Tom does not dispute this point,⁸⁰ with which
10 this court agrees.⁸¹ A person who chooses to become intoxicated
11 and then chooses to drive a car behaves willfully. And Mr. Tom
12 is charged with knowledge of the natural consequences of his
13 actions⁸² which, in these circumstances, permits the court to
14 infer malice. As the court of appeals concluded: "Tom must have
15 known such conduct carried 'probable dangerous consequences'".⁸³
16 The fact that Mr. Tom willfully became intoxicated and then got
17 behind the wheel of his car - despite knowing of the likely

18
19 ⁷⁸ Cal. Civ. Code § 3294(c)(2).

20 ⁷⁹ Colucci v. T-Mobile USA, Inc., 48 Cal. App. 5th 442, 454-55 (2020);
21 Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th 1269, 1287 (1994) (same);
Wong v. Tom, 2015 WL 691413 at *4 (same).

22 ⁸⁰ Opposition (Dkt. 128) at 26:6 (CM/ECF pagination).

23 ⁸¹ Elford, 618 B.R. at 898-900; In re Adams, 761 F.2d 1422, 1427 (9th Cir.
24 1985) ("we hold that the voluntary acts of drinking and driving while
intoxicated constitute conduct sufficiently intentional to support a finding
of willfulness and malice, as contemplated by section 523(a)(6)").

25 ⁸² Elford, 618 B.R. at 898 (citing In re Cohen, 121 B.R. 267, 271 (Bankr. E.D.
26 N.Y. 1990) and In re Su, 290 F.3d 1140, 1146 n.6 (9th Cir. 2002)) ("[i]n
27 addition to what a debtor may admit to knowing, the bankruptcy court may
consider circumstantial evidence that tends to establish what the debtor must
have actually known when taking the injury-producing action").

28 ⁸³ Wong v. Tom, 2015 WL 691413 at *5.

1 dangerous consequences of his willful behavior - is more than
2 sufficient to permit this court to infer malice on Mr. Tom's part
3 for purposes of section 523(a)(6).

4 But even if an appellate court disagrees with this court's
5 conclusion (and Mr. Tom's concession) that choosing to drive
6 while intoxicated cannot be construed as willful and malicious
7 conduct as a matter of law, the court also finds and concludes
8 that the issues of malice and oppression for purposes of an award
9 of punitive damages under California law are identical to the
10 issues of willfulness and maliciousness for purposes of section
11 523(a)(6). Both malice and oppression under California law
12 involve a finding of willfulness on the part of the defendant,⁸⁴
13 just as federal bankruptcy law requires a finding of willfulness
14 in connection with claims under section 523(a)(6). Malice under
15 California law requires a finding of an intentional act, done
16 with intent to cause injury or with a willful and conscious
17 disregard for the safety of others.⁸⁵ This is virtually
18 identical to the definition of malice for purposes of section
19 523(a)(6).⁸⁶ And the Ninth Circuit recognizes that a finding of
20 oppression under section 3294(c)(2) of the California Civil Code
21 (which governed the jury's award of punitive damages in the
22
23

24 ⁸⁴ Cal. Civ. Code §§ 3294(c)(1) and (c)(2).

25 ⁸⁵ Cal. Civ. Code § 3294(c)(1).

26 ⁸⁶ In re Jercich, 238 F.3d 1202, 1209 (9th Cir. 2001) cert. den. 533 U.S. 930
27 (2001) ("[a] malicious injury involves (1) a wrongful act, (2) done
28 intentionally, (3) which necessarily causes injury, and (4) is done without
just cause or excuse") (internal quotation marks and citation omitted).

Wrongful Death Action) is "sufficient to show that the injury . . . was malicious under [section] 523(a)(6)." ⁸⁷

Notwithstanding the overwhelming weight of this authority - the applicability of which Mr. Tom concedes - he argues that genuine issues of material fact exist as to whether he behaved willfully or maliciously. According to Mr. Tom, Ms. Wong "recanted" her 2012 trial testimony in September 2018 and "admitted" that she did not look in the direction of Mr. Tom's approaching vehicle and was talking on her cell phone when the accident occurred. Mr. Tom then posits that, had the jury and the state court had the benefit of such evidence during the trial of the Wrongful Death Action, they could not have concluded that Mr. Tom acted with malice and oppression. He argues that this gives rise to triable issues of fact with respect to whether he behaved willfully and maliciously. This court disagrees.

Ms. Wong's 2018 testimony ⁸⁸ does not in any way amount to a recantation of her testimony and statements presented in the trial of the Wrongful Death Action. In fact, Ms. Wong's 2018 testimony does not differ in any material or significant way from the testimony she gave in 2012. Mr. Tom grossly mischaracterizes Ms. Wong's 2018 testimony by declaring it a recantation of her 2012 testimony or an admission of facts Ms. Wong previously denied. The state court and its jury considered the identical evidence (including evidence of the alleged inconsistencies in

⁸⁷ Id. at 1209.

⁸⁸ Opposition (Dkt. 128) at 7:20-25 (CM/ECF pagination), citing Dkt. 129 (Tom Declaration), Ex. C (partial transcript of testimony of Loraine Wong in Mr. Tom's second criminal trial) at 44:10-52:22.

1 Ms. Wong's description of her conduct immediately prior to the
2 collision) and nevertheless concluded that Mr. Tom was solely at
3 fault for the crash. Mr. Tom has failed to show that *genuine*
4 issues of fact exist as to whether he acted willfully and
5 maliciously for purposes of section 523(a)(6).

6 Plaintiffs have proven that the issues on which they seek
7 summary adjudication are identical to those litigated in the
8 Wrongful Death Action.

9 **3. Actually Litigated**

10 Mr. Tom does not seriously dispute that the issues of his
11 intoxication and of his willful and oppressive or malicious
12 behavior were actually litigated in the Wrongful Death Action,
13 nor could he. The parties tried Wrongful Death Action to a jury.
14 The court of appeals affirmed the jury's verdict and judgment.
15 Before commencing his appeal, Mr. Tom also raised these very
16 issues in his MNT and MPJNOV, which the state court denied.

17 Choosing to ignore this reality, Mr. Tom claims that Ms.
18 Wong's alleged perjury deprived him of the opportunity to
19 litigate these issues fairly. The court rejects this notion
20 because it finds Mr. Tom's characterization of Ms. Wong's 2012
21 testimony as perjurious wildly inaccurate at best, and at worst,
22 a deliberate misrepresentation. Her testimony in 2018 did not
23 materially differ from the testimony and other evidence received
24 by the state court and its jury in 2012.

25 Plaintiffs have proven that the issues on which they seek
26 partial summary judgment were actually litigated in the Wrongful
27 Death Action.

1 **4. Necessarily Decided**

2 Mr. Tom raises the same specious, weak arguments in
3 contending that the issues of his intoxication and of his willful
4 and malicious or oppressive conduct were not necessarily decided
5 in the Wrongful Death Action. The court rejects them once again
6 here.

7 The jury received and considered evidence of Mr. Tom's
8 intoxication and concluded that his choice to drink and drive
9 while intoxicated constituted malicious and oppressive conduct
10 that justified an award of punitive damages. The court of
11 appeals affirmed. Mr. Tom placed these issues before the state
12 court again through his MNT and MPJNOV. To suggest that these
13 issues were not necessarily decided ignores reality.

14 Plaintiffs have proven that the issues of Mr. Tom's wrongful
15 operation of a motor vehicle while intoxicated and of his willful
16 and malicious or oppressive conduct were necessarily decided in
17 the Wrongful Death Action.

18 **5. Final Adjudication**

19 Mr. Tom does not seriously dispute that the verdict and
20 judgment entered in the Wrongful Death Action or that the orders
21 denying his MNT and MPJNOV are final and were on the merits.
22 Instead, he argues that because Ms. Wong perjured herself, the
23 decisions reached by the state court and its jury cannot be
24 deemed meritorious. As previously explained, the court firmly
25 rejects Mr. Tom's characterization of Ms. Wong's testimony.

26 The verdict and judgment entered in the Wrongful Death
27 Action were affirmed on appeal and are now final. Mr. Tom chose
28

1 not to appeal the state court's orders denying his MNT and MPJNOV
2 and those orders are also final.

3 Plaintiffs have proven that the issues on which they seek
4 partial summary judgment were subject to final orders on the
5 merits in the Wrongful Death Action.

6 **6. Public Policy**

7 The public policies underpinning the doctrine of collateral
8 estoppel include "conserving judicial resources and promoting
9 judicial economy by minimizing repetitive litigation, preventing
10 inconsistent judgments which undermine the integrity of the
11 judicial system, and avoiding harassment of parties through
12 repeated litigation."⁸⁹ Mr. Tom argues that applying the jury
13 verdict and judgment and/or orders denying his MNT and MPJNOV to
14 preclusive effect would undermine confidence in the judicial
15 system because they were obtained through Ms. Wong's alleged
16 perjury. The court once again rejects Mr. Tom's characterization
17 of Ms. Wong's 2012 testimony and therefore rejects his public
18 policy arguments.

19 The jury entered a verdict in favor of Plaintiffs as to the
20 very same issues on which they now seek summary adjudication.
21 The court of appeals affirmed that verdict. Mr. Tom also placed
22 these same issues before the state court in his MNT and MPJNOV,
23 which the state court denied. Refusing to honor those final
24 decisions on identical issues that were litigated on the merits
25 by the same parties would harm the integrity of the judicial
26 system, would unnecessarily burden the court and Plaintiffs with

27
28 ⁸⁹ Murray v. Alaska Airlines, Inc., 50 Cal. 4th 860, 879 (2010) (citations omitted).

1 repetitive litigation, and would subject Plaintiffs to
2 harassment. The public policy concerns underlying the doctrine
3 of collateral estoppel strongly support its application here.

4 **B. Evidentiary Issues and Request for Judicial Notice**

5 As previously noted, the court orally overruled Mr. Tom's
6 evidentiary objections at the outset of the July 21 hearing. It
7 also sustained Plaintiffs' evidentiary objection to Exhibit D
8 attached to Mr. Tom's declaration and overruled Mr. Tom's
9 objections to the supplemental declaration and additional
10 exhibits submitted by Plaintiffs in reply to his Opposition. The
11 court reiterates those rulings here for the reasons stated on the
12 record.

13 Mr. Tom vigorously insists that the jury's verdict and
14 judgment, as well as the state court's orders denying his MNT and
15 MPJNOV, are inadmissible hearsay. This is flatly incorrect.
16 Prior orders and judgments are not hearsay to the extent offered
17 as legally operative verbal conduct that determined the rights
18 and duties of the parties.⁹⁰

19 In addition, California law permits a court to take judicial
20 notice of prior court orders and judgments for purposes of
21 application of the doctrine of collateral estoppel.⁹¹ The
22 Federal Rules of Evidence also permit the court to take judicial
23
24
25

26 ⁹⁰ U.S. v. Boulware, 384 F.3d 794, 806 (9th Cir. 2004) (citation omitted).

27 ⁹¹ Guarantee Forklift, Inc. v. Capacity of Texas, Inc., 11 Cal. App. 5th 1066,
28 1075-76 (2017).

1 notice of matters in the public record.⁹² Accordingly, the court
2 hereby grants Plaintiffs' Request for Judicial Notice.⁹³

3 **VII. Conclusion**

4 Plaintiffs have proven that the jury's verdict and judgment,
5 as well as the state court's orders denying Mr. Tom's MNT and
6 MPJNOV are entitled to preclusive effect under the doctrine of
7 collateral estoppel. This means that Plaintiffs are entitled to
8 summary adjudication on the issues of whether **(a)** Mr. Tom's
9 operation of his motor vehicle was unlawful due to his
10 intoxication by alcohol for purposes of section 523(a)(9); **and**
11 **(b)** Mr. Tom behaved willfully and maliciously for purposes of
12 section 523(a)(6).

13 Accordingly, the court **ORDERS** as follows:

14 **1.** The Motion is hereby **GRANTED**;

15 **2.** Plaintiffs' Request for Judicial Notice is hereby
16 **GRANTED; and**

17 **3.** Plaintiffs' counsel shall upload a proposed form of
18 judgment on Plaintiffs' claims under sections 523(a)(9) and
19 523(a)(6).
20

21 ****END OF ORDER****
22
23
24
25
26

27 ⁹² Hodges v. Hertz Corp., 351 F. Supp. 3d 1227, 1233 (N.D. Cal. 2018).

28 ⁹³ Dkt. 90-3.

Court Service List

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